

G-012/DI-95-513

ORDER CLOSING DOCKET

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Joel Jacobs  
Tom Burton  
Marshall Johnson  
Dee Knaak  
Don Storm

Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

In the Matter of An Investigation of Western  
Gas Utilities, Inc.'s Gas Costs During PGA  
Suspension Period

ISSUE DATE: January 9, 1996

DOCKET NO. G-012/DI-95-513

ORDER CLOSING DOCKET

**PROCEDURAL HISTORY**

On June 24, 1994, the Commission issued its ORDER SUSPENDING WESTERN'S AUTHORITY TO MAKE PURCHASED GAS ADJUSTMENTS TO ITS RATES, in Docket No. G-012/AA-93-218. In its Order, the Commission suspended Western Gas Utilities, Inc.'s (Western's) Purchased Gas Adjustment (PGA) for a period of one year and replaced it with a fixed cost of gas for the suspension period. The Commission required the Company to file its actual gas costs during the suspension period as practice PGA filings. The Commission also required the Department to file a six-month interim report on Western's practice PGAs and cost of gas by February 15, 1995.<sup>1</sup>

In its February 15, 1995 Report, the Minnesota Department of Public Service (the Department) noted that a significant portion of the gas Western purchased from one of its two suppliers during certain months was purchased at the highest price paid by Western for gas. The report also indicated the Department's intent to investigate this issue and bring it to the Commission if appropriate.

The Department also stated that Western's practice PGA filings had been timely and accurate and that the Company had been amenable to the Department's suggestions for further filing refinements.

On May 16, 1995 the Commission issued its ORDER RESTORING PURCHASED GAS ADJUSTMENT in which the Commission found that, after reviewing Western's filings and the Department's comments, the Company had demonstrated the ability to conform to the PGA requirements. The Commission found that the Company demonstrated its ability by complying with the terms of the June 24, 1994 Order, and the Company was allowed to resume normal

---

<sup>1</sup> For details of the proceedings and circumstances leading to the Commission's June 24, 1994 decision to suspend Western's PGA, see the June 24, 1994 Order.

methods of PGA calculations and reporting.

On August 1, 1995, the Department submitted comments on its investigation into Western's purchasing practices during the period of PGA suspension. The Department stated, among other things, that during the course of its investigation it found that Western had entered into a fixed-price contract for some of its gas supply to protect the Company's shareholders during the time period that its PGA was suspended. The Department suggested that ratepayers should not bear the entire cost of the Company's efforts to protect its shareholders and recommended that the Commission require the Company to split the difference in cost between the lower-cost, index-based price gas and the higher cost fixed-price gas between shareholders and ratepayers. The Department further recommended that the Commission allow the Company to spread the refund over two years in order to reduce the financial impact on the Company.

On August 30, 1995, Western filed reply comments. Western argued that it entered into the fixed rate contract in a reasonable effort to ensure that potential losses could be contained, not to circumvent the intent of the Commission's Order. Western requested that the Commission take no further action regarding this matter.

On September 1, 1995, the Department replied to the Company's reply comments. The Department argued that Western's action of entering into the fixed-price contract (and the subsequent decrease in the price of gas) resulted in higher rates than would otherwise have occurred and was neither justified nor prudent. Regardless of whether the Company intentionally circumvented the Commission's intent in suspending the PGA or not, the effect of Western's action was to saddle its ratepayers with higher rates than they would have paid had the PGA never been suspended. The Department stated that if the Commission believed the financial burden of refunding 50 percent of the difference over two years is still too great, it could stretch out the period of refunds or reduce the percentage to be refunded.

On December 21, 1995, the Commission met to consider this matter.

## **FINDINGS AND CONCLUSIONS**

### **A. Facts**

After the Commission suspended Western's authority to collect the actual cost of gas through the PGA, Western deviated from its usual purchasing practice of index-based contracts and entered into a fixed-price contract to protect its shareholders from a possible price increase for gas during the period its PGA was suspended.

## **B. The Department's Recommendation**

While recognizing the value of reducing risk during unusual circumstances, the Department believes the Company should have given more consideration to the impact on ratepayers, particularly because of the difficulty in predicting changes in the price of gas and the unusual circumstances of a PGA suspension.

The Department recommended that the Commission direct Western to refund half of the difference in cost between the lower-cost, index-based price gas and the higher cost fixed-price gas.

## **C. Commission Analysis**

It is unclear to the Commission exactly what "giving more consideration to the impact on ratepayers" would have meant in these circumstances. More important, the prudence of any business decision is to be judged in light of the circumstances existing at the time the decision was made. The Department has pointed to no information that was known or, upon the exercise of reasonable diligence, would have been known to the Company to indicate that entering into a fixed-price contract would have a substantially negative impact upon ratepayers. Specifically, based on the record established in this case, it does not appear that there was any way for Western to know that the price of gas would decline during the period of the PGA suspension.

Hence, there is no basis in the record to conclude that Western's action in entering into a fixed-price contract was imprudent. On the contrary, as the Department itself indicated, the action appears to have been understandable.

In these circumstances, the Commission will not proceed to an equally fundamental question, i.e. whether the Commission has the authority (statutory or implied) to order the refund recommended by the Department.

## **D. Commission Action**

The Commission will not order a refund as recommended by the Department. The Commission will take no further action in this matter other than to close this docket.

## **ORDER**

1. The Department's recommendation that the Commission direct Western to refund half of the difference between its fixed-price contract and a price it might have paid had it not entered into such contract is not accepted.
2. This docket shall be closed.

3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary

(S E A L)

This document can be made available in alternative formats (i.e., large print or audio tape) by calling (612) 297-1200 (TDD/TTY) or 1 (800) 657-3782.